SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. [redacted] 17

THE UNITED STATES OF AMERICA,
Appellant,

vs.

CRESCENT AMUSEMENT COMPANY, ROCKWOOD AMUSEMENT COMPANY, CHEROKEE AMUSEMENTS, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

MOTION TO DISMISS.

GEO. H. ARMISTEAD, JR.,
WILLIAM WALLER,
Counsel for Appellees.

ARMISTEAD, WALLER,
DAVIS & LANSDEN,
Of Counsel.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE MIDDLE DISTRICT OF TENNEISEE,
NASHVILLE DIVISION

CIVIL ACTION NO. 54.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE CRESCENT AMUSEMENT COMPANY, ET AL.,

Defendants.

MOTION OF THE CRESCENT AMUSEMENT COMPANY, CUMBERLAND AMUSEMENT COMPANY, LYRIC AMUSEMENT COMPANY, INC., ROCKWOOD AMUSEMENTS, INC., CHEROKEE AMUSEMENTS, INC., KENTUCKY AMUSEMENT COMPANY, INC., ANTHONY SUDEKUM, AND KERMIT C. STENGEL, TO DISMISS THE APPEAL.

The Crescent Amusement Company, Cumberland Amusement Company, Lyric Amusement Company, Inc., Rockwood Amusements, Inc., Cherokee Amusements, Inc., Kentucky Amusement Company, Inc., Anthony Sudekum, and Kermit C. Stengel move to dismiss the appeal filed by the plaintiff in this cause, on the ground that the appeal is premature in that at the time of the filing of the appeal there was pending and undisposed of by the Court a motion of The Crescent Amusement Company to amend the findings of fact and to make additional findings, which

motion was filed on May 27, 1943, and likewise there were pending and undisposed of motions of defendants, Cumberland Amusement Company, Lyric Amusement Company, Inc., Rockwood Amusements, Inc., Cherokee Amusements, Inc., Kentucky Amusement Company, Inc., Anthony Sudekum and Kermit C. Stengel, to amend the findings and for additional findings, which motions were filed on May 27, 1943. Also there were pending and undisposed of a petition of Cumberland Amusement Company filed on March 23, 1943, a petition of Rockwood Amusements, Inc., Cherokee Amusements, Inc., and Kentucky Amusement Company, Inc., filed on March 23, 1943, and a supplemental petition of Rockwood Amusements, Inc., Cherokee Amusements, Inc., and Kentucky Amusements, Inc., filed on March 26, 1943.

These motions and petitions were not addressed to mere matters of form, but raised questions of substance since their purpose was to seek a reconsideration of "certain basic findings of fact and the alteration of the conclusions of the Court. In short, the necessary effect was to ask that rights already adjudicated be altered." The judgment of the Court, therefore, was not final, which is essential to appealability.

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